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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

14 **MATTHEW CHRISTIAN PALOCSAY**

15 **Registered Nurse License Applicant**

16 Respondent.

Case No. 2013-483

OAH No. 2013010103

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

17 **FINDINGS OF FACT**

18 1. On or about December 13, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs, filed Statement of Issues No. 2013-483 against Matthew Christian Palocsay
(Respondent) before the Board of Registered Nursing.

21 2. On or about July 11, 2012, Respondent filed an application dated July 3, 2012, with
22 the Board of Registered Nursing to obtain a Registered Nurse License.

23 3. On or about August 30, 2012, the Board issued a letter denying Respondent's
24 application for a Registered Nurse License. On or about September 8, 2012, Respondent
25 appealed the Board's denial of his application and requested a hearing.

26 4. On or about December 14, 2012, an employee of the Department of Justice, served by
27 Certified and First Class Mail a copy of the Statement of Issues No. 2013-483, Statement to
28 Respondent, Respondent/Applicant's Notice of Designation of Counsel, Respondent/Applicant's

1 Notice of Withdrawal of Request for Hearing, Request for Discovery, Government Code sections
2 11507.5, 11507.6, and 11507.7, and Disciplinary Guidelines to Respondent's address on the
3 application form, which was and is 1002 30th Street, Apt. 208, San Diego, CA 92102. A copy of
4 the Statement of Issues is attached as Exhibit A, and is incorporated herein by reference.

5 5. Service of the Statement of Issues was effective as a matter of law under the
6 provisions of Government Code section 11505, subdivision (c).

7 6. A Notice of Hearing was served by mail at Respondent's address on the application
8 and it informed him that an administrative hearing in this matter was scheduled for July 25, 2013.
9 On or about February 12, 2013, Respondent withdrew his request for a hearing in this action.
10 Respondent/Applicant's Notice of Withdrawal of Request for Hearing is attached as Exhibit B,
11 and is incorporated herein by reference.

12 7. Business and Professions Code section 118 states, in pertinent part:

13 (a) The withdrawal of an application for a license after it has been filed with a
14 board in the department shall not, unless the board has consented in writing to such
15 withdrawal, deprive the board of its authority to institute or continue a proceeding
16 against the applicant for the denial of the license upon any ground provided by law or
17 to enter an order denying the license upon any such ground.

18 8. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent
20 files a notice of defense, and the notice shall be deemed a specific denial of all parts
21 of the accusation not expressly admitted. Failure to file a notice of defense shall
22 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
23 may nevertheless grant a hearing.

24 9. California Government Code section 11520 states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense or to appear at the
26 hearing, the agency may take action based upon the respondent's express admissions
27 or upon other evidence and affidavits may be used as evidence without any notice to
28 respondent; and where the burden of proof is on the respondent to establish that the
respondent is entitled to the agency action sought, the agency may act without taking
evidence.

10 Pursuant to its authority under Government Code section 11520, the Board finds
11 Respondent is in default. The Board will take action without further hearing based upon the
12 allegations set forth in the Statement of Issues No. 2013-483, as well as Respondent's withdrawal
13 of his request for an administrative hearing to appeal of the denial of his application.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Matthew Christian Palocsay has subjected his application for a Registered Nurse License to denial.

2. Service of Statement of Issues No. 2013-483 and related documents was proper and in accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Registered Nursing is authorized to deny Respondent's application for licensure based upon the following violations alleged in the Statement of Issues:

a. Respondent's application is subject to denial under sections 480, subdivision (a)(1) and 2671, subdivision (f) of the Code for unprofessional conduct in that on or about October 22, 2008, in a criminal proceeding entitled *People of the State of California v. Matthew Christian Palocsay*, in San Diego County Superior Court, case number CD215674, Respondent was convicted on his plea of guilty to violating Penal Code section 594, subdivision (a)(b)(1), vandalism over \$400, a misdemeanor, a crime that is substantially related to the qualifications, duties, and functions of a registered nurse.

b. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A) of the Code in that on or about November 21, 2006, Respondent used alcoholic beverages to an extent or in a manner that was dangerous and injurious to himself and the public. Such conduct would be a ground for discipline under section 2762, subdivision (b) of the Code for a licensed registered nurse.

Attachments:

Exhibit A: Statement of Issues No. 2013-483

Exhibit B: Respondent/Applicant's Notice of Withdrawal of Request for Hearing

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

MATTHEW CHRISTIAN PALOCSAY

Registered Nurse License Applicant

Respondent.

Case No. 2013-483

OAH No. 2013010103

DECISION AND ORDER

IT IS SO ORDERED that the application for Registered Nurse License, filed by Respondent Matthew Christian Palocsay, is denied.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MAY 23, 2013.

It is so ORDERED APRIL 23, 2013



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A

Statement of Issues No. 2013-483

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
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5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. *2013-483*

13 **MATTHEW CHRISTIAN PALOCSAY**

STATEMENT OF ISSUES

14 **Registered Nurse License Applicant**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about July 11, 2012, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nurse License from Matthew Christian
24 Palocsay (Respondent). On or about July 3, 2012, Matthew Christian Palocsay certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on August 30, 2012.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3)(A) Done any act that if done by a licentiate of the business or profession in
2 question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the crime
4 or act is substantially related to the qualifications, functions, or duties of the business
5 or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, no person shall be denied
7 a license solely on the basis that he or she has been convicted of a felony if he or she
8 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
9 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
10 convicted of a misdemeanor if he or she has met all applicable requirements of the
11 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
12 person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) A board may deny a license regulated by this code on the ground that the
14 applicant knowingly made a false statement of fact required to be revealed in the
15 application for the license.

16 7. Section 492 of the Code states:

17 Notwithstanding any other provision of law, successful completion of any
18 diversion program under the Penal Code, or successful completion of an
19 alcohol and drug problem assessment program under Article 5 (commencing
20 with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall
21 not prohibit any agency established under Division 2 ([Healing Arts]
22 commencing with Section 500) of this code, or any initiative act referred to in
23 that division, from taking disciplinary action against a licensee or from denying
24 a license for professional misconduct, notwithstanding that evidence of that
25 misconduct may be recorded in a record pertaining to an arrest.

26 This section shall not be construed to apply to any drug diversion
27 program operated by any agency established under Division 2 (commencing
28 with Section 500) of this code, or any initiative act referred to in that division.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a
board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

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1 manner consistent with the public health, safety, or welfare. Such convictions or acts
2 shall include but not be limited to the following:

3 (a) Assaultive or abusive conduct including, but not limited to, those violations
4 listed in subdivision (d) of Penal Code Section 11160.

5 (b) Failure to comply with any mandatory reporting requirements.

6 (c) Theft, dishonesty, fraud, or deceit.

7 (d) Any conviction or act subject to an order of registration pursuant to Section
8 290 of the Penal Code.

9 13. California Code of Regulations, title 16, section 1445 states:

10 (a) When considering the denial of a license under Section 480 of the code,
11 the board, in evaluating the rehabilitation of the applicant and his/her present
12 eligibility for a license will consider the following criteria:

13 (1) The nature and severity of the act(s) or crime(s) under consideration as
14 grounds for denial.

15 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
16 under consideration as grounds for denial which also could be considered as grounds
17 for denial under Section 480 of the code.

18 (3) The time that has elapsed since commission of the act(s) or crime(s)
19 referred to in subdivision (1) or (2).

20 (4) The extent to which the applicant has complied with any terms of parole,
21 probation, restitution, or any other sanctions lawfully imposed against the applicant.

22 (5) Evidence, if any, of rehabilitation submitted by the applicant.

23

24 **FIRST CAUSE FOR DENIAL OF APPLICATION**

25 **(October 22, 2008 Criminal Conviction for Vandalism on August 6, 2008)**

26 14. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
27 and 2671, subdivision (f) of the Code for unprofessional conduct in that he was convicted of a
28 crime that is substantially related to the qualifications, duties, and functions of a registered nurse.
The circumstances are as follows:

a. On or about October 22, 2008, in a criminal proceeding entitled *People of
the State of California v. Matthew Christian Palocsay*, in San Diego County Superior Court, case
number CD215674, Respondent was convicted on his plea of guilty to violating Penal Code

1 section 594, subdivision (a)(b)(1), vandalism over \$400, a misdemeanor pursuant to Penal Code
2 section 17b(4). The court dismissed an additional count of violating Penal Code section 459,
3 burglary, pursuant to a plea agreement.

4 b. As a result of the conviction, on or about October 22, 2008, Respondent
5 was granted three years summary probation, and sentenced to one day in jail, with credit for one
6 day. Respondent was further ordered to complete 100 hours of volunteer work, and pay fees,
7 fines and restitution.

8 c. The facts that led to the conviction are that on or about three in the morning
9 on August 6, 2008, the San Diego Police Department dispatched an officer to investigate a
10 burglary in progress at a Long's drug store. Upon arrival, the officer made contact with
11 Respondent who was sitting outside of the store on a curb. The glass doors of the main entrance
12 were broken, and there was a police-style expandable baton on the ground near the doors.
13 Respondent was taken into custody without incident. During questioning, Respondent told the
14 officers that he had called 9-1-1 several times to report what he believed was illegal activity and
15 got no response from the officers. Respondent got angry and went to the Long's drug store with
16 his baton. He said he smashed the windows in order to get attention from the police. The officer
17 noted that Respondent had the odor of an alcoholic beverage on his breath.

18 **SECOND CAUSE FOR DENIAL OF APPLICATION**

19 **(Dangerous Use of Alcohol)**

20 15. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
21 of the Code in that on or about November 21, 2006, Respondent used alcoholic beverages to an
22 extent or in a manner that was dangerous and injurious to himself and the public. Such conduct
23 would be a ground for discipline under section 2762, subdivision (b) of the Code for a licensed
24 registered nurse. The circumstances are as follows:

25 a. On or about November 21, 2006, Respondent was arrested and charged with
26 violating Penal Code section 647, subdivision (f), public intoxication, a misdemeanor. According
27 to Respondent, he had been drinking with friends and did not want to drive home with them
28 because they were too intoxicated. Respondent decided to walk home, but was arrested.

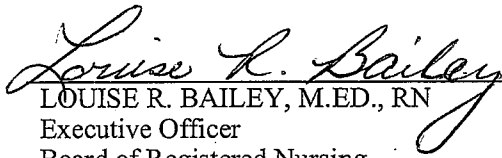
1 b. As a result of the arrest, on or about January 18, 2007, in a criminal proceeding
2 entitled *People of the State of California v. Matthew Christian Palocsay*, in Orange County
3 Superior Court, case number 07HM00405, Respondent was ordered to attend and complete the
4 Orange Coast College Alcohol Awareness Program. On or about February 16, 2007, Respondent
5 provided proof of completion of the program and the charge was dismissed.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Registered Nursing issue a decision:

- 9 1. Denying the application of Matthew Christian Palocsay for a Registered Nurse
10 License;
11 2. Taking such other and further action as deemed necessary and proper.
12
13

14 DATED: December 13, 2012


15 LOUISE R. BAILEY, M.ED., RN
16 Executive Officer
17 Board of Registered Nursing
18 Department of Consumer Affairs
19 State of California
20 Complainant

21 SD2012704329
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Exhibit B

Respondent/Applicant's Notice of Withdrawal of Request for Hearing

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

MATTHEW CHRISTIAN PALOCSAY

Respondent.

Case No. 2013-483

**RESPONDENT / APPLICANT'S NOTICE
OF WITHDRAWAL OF REQUEST FOR
HEARING**

In accordance with California Code of Regulation, title 1, section 1014(c), a party withdrawing a request for hearing, shall immediately notify the Office of Administrative Hearings and all parties. I understand that a hearing will be held upon the charges made in the Statement of Issues unless I notify the Board of Registered Nursing that I do not want the hearing previously requested on the denial of my Registered Nurse License application.

IF YOU WISH TO WITHDRAW YOUR NOTICE OF DEFENSE OR REQUEST FOR A HEARING, PLEASE DO SO BY DATING AND SIGNING BELOW AND DELIVERING OR MAILING THIS FORM TO:

Amanda Dodds
Senior Legal Analyst
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266

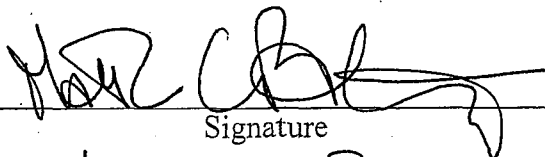
TO THE BOARD OF REGISTERED NURSING:

I, the undersigned Respondent in this proceeding, hereby acknowledge receipt of a copy of the Statement of Issues; the Statement to Respondent; Respondent/Applicant's Notice of Designation of Counsel (2 copies); Respondent/Applicant's Notice of Withdrawal of Request for Hearing (2 copies); Request for Discovery; Discovery Statutes; and Disciplinary Guidelines.

I withdraw my letter requesting a hearing.

2/8/13

Date



Signature

MATTHEW C. PALOCSAY

Print Name

SD2012704329
70660068.DOC